

[ORIGINAL CIVIL JURISDICTION]

WHITLEY, J.

July 23, 1935.

RE AUGUSTINE UMPU.

[SINGAPORE SUMMARY CASE (BANKRUPTCY)]

No. 40 of 1935.]

Ordinance No. 44 (Bankruptcy) Section 105—Administration Order.—Position of such order when Receiving and Adjudication orders are subsequently made.

In this bankruptcy an Administration order was made on the 5th December, 1933, under Section 105 of Ordinance No. 44 (Bankruptcy). That order directed *inter alia* payment by the Debtor of \$8 a month and these sums were accumulated until they amounted to \$364.80. Subsequently on the 1st February, 1935, Receiving and Adjudication Orders were made against the debtor.

Held, (i) that the sums standing to the credit of the bankrupt in his account under the administration order together with any further sums which might have since been paid by him under that order should be paid out to the creditors under the administration order, and that the new creditors proving in the bankruptcy could have no rights in respect thereof.

(ii) that the Official Assignee should apply to the District Court to set aside the Administration Order as from the 1st February, 1935, in view of the Receiving and Adjudication Orders made on that date.

(iii) that creditors under the Administration order could prove in the bankruptcy for any balances due to them.

Semble, (a) that the administration order was not automatically discharged by reason of the making of the Receiving and Adjudication Orders.

(b) that the running of the period of limitation in respect of the debts due at the date of the Administration order was suspended between the date of that order and the date of the Receiving and Adjudication Orders.

Summons.

E. B. Williams, Official Assignee, in person.

The facts and argument are sufficiently set out in the judgment.

Cur. Ad. Vult.

WHITLEY, J.—This application for directions by the Official Assignee raises the question whether an Administration Order made under section 105 of Ordinance No. 44 (Bankruptcy) becomes discharged by reason of the subsequent making of a Receiving and Adjudication order against the same person.

The Administration Order was made on the 5th day of December, 1933, and ordered, *inter alia*, that the debtor should pay to the Official Assignee \$8 per month to the extent of 90% of his debts. The debtor declared his debts at \$492 and a sum of \$364.80 now stands to his credit in his account under that Order. No dividend has been declared but that sum is available in the hands of the Official Assignee. There are five creditors.

Receiving and Adjudication Orders were made against the debtor on the 1st February,

1935. In his Statement of Affairs he gives the names of the same five creditors for the same amounts and seven new creditors.

On the 2nd April, 1935, the Official Assignee filed on application for directions asking

- (a) whether the administration order has become discharged by reason of the making of the Receiving and Adjudication Orders,
- (b) whether the sum of \$364.80 is to be transferred to the credit of the bankruptcy proceedings or is it to be paid to the creditors in the Administration Order proceedings,
- (c) whether the creditors in the administration proceedings whose debts could not in any case be affected by the Limitation Ordinance can prove in the bankruptcy,
- (d) whether a creditor, Batora Singh, whose debts would be statute barred unless the period of limitation were suspended between the 5th December, 1933, the date of the administration order and the 1st February, 1935, the date of the Receiving Order, can prove in the bankruptcy.

There is no provision in the Bankruptcy Ordinance as to what shall happen if Receiving and Adjudication Orders are made when an Administration order is still in force.

Section 105 gives the District Court power to make an administration order where a judgment has been obtained and the debtor being unable to pay the whole amount forthwith alleges that his whole indebtedness does not exceed \$500.

The section is based to some extent upon section 122 of the Bankruptcy Act, 1883, but here, by sub-section (3), it is provided that when the order is made the proceedings shall be transmitted to the Official Assignee who shall carry the order into effect, whereas under the English Act the order is carried into effect by the County Court which makes the Order.

Rule 15(5) made under the English section gives the Court power to set aside or rescind the administration order where a receiving order has since the date of the administration order been made against the debtor, but we have no such rule under our Ordinance.

Nor have we in our Ordinance any section analogous to section 3 of the Bankruptcy Act, 1926 (which replaced section 39 of the Act of 1914) which relates to second or successive bankruptcies and which substantially altered what had been held to be the law prior to the Act of 1914.

That being so, it is necessary when looking for assistance on this point to the English authorities, to refer to cases decided under the Act of 1883 upon which our Ordinance is based. In *Re*

Clark, (1894) 2 Q.B. 393, it was held following *Ex parte Ford*, 1 Ch. D. 521 that where an undischarged bankrupt traded without the knowledge of his trustee and acquired property and then became bankrupt a second time, property so acquired must be treated as assets in the first bankruptcy. If there was a surplus after payment in full of the debts and expenses under the first bankruptcy, it was held that the trustee in the second bankruptcy would only be entitled to such surplus in so far as the bankrupt had not effectually dealt with it before the second bankruptcy.

Bird v. Philpott, (1900) 1 Ch. 822.

In the course of his judgment in that case, Farwell J. observed that the trustee in the second bankruptcy could only take the property of the bankrupt at the time of the second receiving order, and that what that property was depended upon what the bankrupt had done with it between the date of the first order and the date of the second order.

In the present case accordingly it seems to me clear that the moneys in the hands of the Official Assignee at the date of the Receiving Order being moneys paid to him by the debtor in pursuance of the administration order must be divisible amongst the creditors in the administration proceedings and that the new creditors proving in the bankruptcy can have no rights in respect thereof.

As the Official Assignee pointed out, it is obviously undesirable that the administration order and the Receiving and Adjudication Orders should continue in force at the same time. Such overlapping could only lead to complications and inconvenience. It seems to me that the respective rights of the new and old creditors will be best preserved by the Official Assignee applying to the District Court to rescind the Administration Order, and by my making an Order in the bankruptcy proceedings that for payments by the bankrupt to the Official Assignee similar to those ordered under the Administration Order such payments to commence from the date upon which payments under the administration order ceased.

The Court has power to rescind its own order under section 90 and section 105 (2) seems to contemplate that when subsequent to the making of an administration order it is found that the debts exceed \$500 the Court may set aside the order. The section is not very clearly worded but it seems to me that the intention must be that in such a case administration proceedings may be set aside and, in effect, become merged in and superseded by the bankruptcy proceedings, provided always that the rights of the creditors in the administration proceedings are properly safeguarded.

I accordingly direct as follows:—

1. That, until further order in the bankruptcy the bankrupt shall continue to make the payments ordered by the District Court in the Administration Order.
2. That the Official Assigned shall apply to the District Court to set aside the Administration Order as from the 1st February, 1935, in view of the Receiving and Adjudication Orders made on that date.
3. That the sum of \$364.80 standing to the credit of the bankrupt in his account under the Administration Order together with any further sums which may have since been paid by him under that Order shall be paid out to the creditors under the Administration Order.
4. That the creditors under the Administration Order including Botora Singh can prove in the bankruptcy for any balances still remaining due to them.

Order Accordingly.

[ORIGINAL CIVIL JURISDICTION]

BURTON, Ag. C. J.

August 9, 1935.

ANG CHEE SENG

vs.

TAN KHEE SWEE

[SINGAPORE SUIT No. 178 of 1934]

Practice—Setting aside of Judgment or order.

The Plaintiff sued the Defendant as executor of the estate of Tan Joo Cheow deceased and as no appearance was entered the Plaintiff entered final judgment against the Defendant on the 3rd September, 1934. The judgment was a judgment against the Defendant *simpliciter* and not *levandum de bonis testatoris*. On the 28th September, 1934 the Plaintiff made an application to amend the judgment so as to make it *levandum de bonis testatoris* but eventually no order was made on this application. On the 9th November, 1934 the Plaintiff applied by Summons for an order that the judgment entered on the 3rd September, 1934 be set aside without prejudice to his bringing another suit against the Defendant for the same cause of action and subsequently on the 28th June, 1935 an order was made in the terms of the application. The original judgment having been thus set aside the Plaintiff subsequently applied for and on the 23rd July, 1935 entered judgment against the Defendant *levandum de bonis testatoris*; whereupon one of the beneficiaries of the estate applied for leave to intervene in the proceedings and to set aside the order of the 23rd June, 1935 and the judgment subsequently entered.

Held, that the order of the 28th June, 1935 had been irregularly made without jurisdiction and therefore must be set aside together with the subsequent judgment of the 23rd July 1935. *MacCarthy v. Agard*, (1933) 2 K. B. 417 and *Savena Supramaniam Pillay v. Tan Kah Chiat*, 1934 S. S. L. R. 143; 3 Mal. L. J. 133 followed. *Craven v. Aislabie*, (1736) Barnes 251 not followed.